ORDINANCE NO. 2013-1740

AN ORDINANCE ADDING CHAPTER 33 OF THE SOLANO COUNTY CODE, RELATING TO THE THEFT OF NUTS

WHEREAS, walnuts have been the number one crop in Solano County for the last two years; and

WHEREAS, nut orchard acreage continues to increase in the county, with over 12,000 bearing walnut and almond acres currently located within the county; and

WHEREAS, unprocessed nuts are highly fungible; and

WHEREAS, the value of walnuts and almonds combined, had a 2012 value in excess of $59 million; and

WHEREAS, county growers have been experiencing increasing losses from nut theft; and

WHEREAS, existing statutes do not provide for sufficient record keeping to track illicit nut purchases.

NOW, THEREFORE, the Board of Supervisors of the County of Solano ordains as follows:

Section 1. Chapter 33 is added as follows:

Chapter 33

NUT THEFT

§ 33.10. Legislative Authorization

§ 33.20. Definitions

§ 33.30. Proof of Ownership Certificate

§ 33.40. Proof of Ownership Certificate – Inspection, Presentation and Retention

§ 33.50. Exemptions

§ 33.60. Civil Penalties

§ 33.70. Transportation or Sale of Nuts to Non-processing Nut Buying Operations Outside of the Nut Buying Period

Sec. 33.10. Legislative Authorization

This chapter is adopted pursuant to Food and Agricultural Code section 866.

Sec. 33.20. Definitions

As used in this chapter, the following terms have the following meanings:

(a) "Agricultural commissioner" means the Agricultural Commissioner of Solano County or
his or her designee(s).

(b) "Agricultural commodity" means any nut crop of any quantity in a raw and unprocessed form.

(c) "Buyer" means any person engaged in the purchase of an agricultural commodity, and who is licensed to engage in such business by the state.

(d) "Gleaning" means the process through which agricultural commodities remaining on the ground following the grower's completion of the harvest are gathered with the permission of a grower and with proof of ownership.

(e) "Grower" means any person who has grown and harvested an agricultural commodity.

(f) "Non-processing Nut buying operation" means a buyer of Nuts which have not been dried or processed who does not have on-site processing.

(g) "Nuts" means the seed or ripened ovule of the walnut or almond tree including the kernel, shell and hull.

(h) "Person" means any individual, firm, partnership, joint venture, corporation or other entity growing, possessing, buying, transporting or selling an agricultural commodity as a principal or as an agent of another.

(i) "Proof of ownership" means:

1. If the possessor of the agricultural commodity is the grower of the commodity, proof that the commodity was grown by the grower. Proof of ownership in this context shall mean documents or information sufficient to verify that the possessor is the grower of the commodity.

2. If the possessor of the agricultural commodity is a person other than the grower of the possessed agricultural commodity, a completed proof of ownership certificate meeting the requirements of Section 33.30.

(j) "Seller" means a person who sells or attempts to sell an agricultural commodity to a buyer or other person.

(k) "Nut buying period" means the declared conclusion of harvest of the Chandler variety of walnuts by the agricultural commissioner, after consultation with walnut growers, whereupon non-processing Nut buying operations within Solano County may commence. Such period shall be proclaimed seventy-two (72) hours in advance by press release and shall last until almond trees bear nuts in the subsequent season, as determined by the agricultural commissioner.

Sec. 33.30. Proof of Ownership Certificate

(a) The proof of ownership certificate shall contain the following information:

1. Name, address, telephone number, and signature of the seller.
(2) Name, address, telephone number, and signature of the buyer.

(3) The vehicle license plate number of the seller.

(4) The driver’s license number of the seller.

(5) The weight of the agricultural commodity purchased.

(6) The date and time of the transaction.

(7) The variety and condition of the agricultural commodity.

(8) Specific identification of the source of the commodity being sold. If the seller is the grower of the commodity, this shall mean the address at which the commodity was grown. If the seller is not the grower of the commodity, this shall mean the name and address and phone number of the person from whom that seller obtained the commodity, and if known, the address where the commodity was grown.

(b) It is the responsibility of a buyer to obtain the requisite information to permit completion of the proof of ownership certificate. The proof of ownership certificate shall not be valid unless signed by both the buyer and the seller.

(c) The agricultural commissioner shall develop a form consistent with this section. Persons may use an alternative written certificate, so long as it contains the information and signatures required by this section and is found to be acceptable to the agricultural commissioner.

Sec. 33.40. Proof of Ownership Certificate – Inspection, Presentation and Retention

(a) The proof of ownership shall be retained with the agricultural commodity to which it pertains while the commodity is in any person’s possession.

(b) Upon probable cause to believe that any agricultural commodity is in the unlawful possession of any person, the agricultural commissioner or any peace officer may inspect the commodity and request that proof of ownership be provided. The possessor of the commodity shall permit inspection of the commodity and of corresponding proof of ownership.

(c) To facilitate inspection by the agricultural commissioner, the buyer shall purchase and keep the commodity at a place of business in compliance with the county building and planning/zoning ordinances, until transported for resale or other handling.

(d) Following any sale of the agricultural commodity by a person other than the grower of the possessed agricultural commodity, the proof of ownership certificate shall be retained by the buyer for a period of two (2) years from the date of such sale.
Sec. 33.50. Exemptions

This chapter shall not apply to the following:

(a) Commodities transported directly by a grower or agent from the farm or ranch where they are grown to a commercial packing plant within this state for processing or packing.

(b) Commodities in possession of any person as a result of gleaning undertaken with the permission of the grower.

(c) Commodities transported and accompanied by a valid permit, disposal order, or certificate issued by the agricultural commissioner for any reason other than to comply with this article.

(d) Notwithstanding the exemption provided in subdivisions (a) and (b), the agricultural commissioner or any peace officer may inspect any agricultural commodity as provided in this chapter and may require that information be provided sufficient to permit verification that the exemption applies.

Sec. 33.60. Civil Penalties

Pursuant to Food and Agricultural Code section 885, in lieu of civil prosecution, the agricultural commissioner may levy a civil penalty against any person violating the provisions of this chapter. The civil penalty for each violation shall be, for a first violation, a fine of not more than ($500). For a second or subsequent violation, the fine shall be not less than one hundred dollars ($100), nor more than one thousand dollars ($1,000). Before a civil penalty is levied the person charged with the violation shall receive notice of the nature of the violation and shall be given the opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf. Food and Agriculture Code section 43003, subdivision (e) shall apply to any fine levied pursuant to this section.

Sec. 33.70. Transportation or Sale of Nuts to Non-processing Nut Buying Operations Outside of the Nut Buying Period

Nuts that have not been dried or processed shall not be transported to, sold to, or received by a non-processing Nut buying operation within Solano County outside of the Nut buying period.

Section 2. Severability

If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, including but not limited to being preempted by state law, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion nor other applications of the ordinance which can be given effect without the invalid provision or application.
Section 3. Effective Date

This ordinance shall be effective thirty (30) days after its adoption.

Section 4. Publication

A summary of this ordinance shall be published once within fifteen (15) days after its adoption, in the Fairfield Daily Republic, a newspaper of general circulation in the County of Solano.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on October 8, 2013 by the following vote:

AYES: Supervisors Hannigan, Spering, Thomson, Vasquez, and Chair Seifert.

NOES: Supervisors None.

EXCUSED: Supervisors None.

Linda J. Seifert, Chair
Solano County Board of Supervisors

ATTEST:

Birgitta E. Corsello, Clerk
Solano County Board of Supervisors

By: Patricia J. Crittenden, Chief Deputy Clerk

Introduced: September 24, 2013

Adopted: October 8, 2013

Effective: November 8, 2013